

MEMORANDUM

TO: ENVIRONMENTAL AND SAFETY DESIGNS, INC.

FROM: ALLEN T. MALONE
APPERSON, CRUMP, DUZANE & MAXWELL

DATE: AUGUST 26, 1992

RE: CEDAR CHEMICAL CORPORATION V. WORMALD U.S., INC.
NO. E-91-349
PHILLIPS COUNTY CHANCERY COURT

This memorandum is submitted to you to be included in the final, revised Current Conditions Report to be submitted to the Arkansas Department of Pollution Control and Ecology (ADPC&E) pursuant to the provisions of the Consent Administrative Order (CAO) entered in LIS-91-118.

The purpose of this memorandum is to disclose information (other than information provided by the Defendant Wormald, the disclosure of which is governed by the provisions of a Protective Order entered in the referenced case) relative to products manufactured on the West Helena Site and waste disposal practices on the Site during the period 1971 - 1973. Most of the information discussed below was provided by persons who were deposed in the course of discovery proceedings leading up to the hearing on Cedar's Motion for Partial Summary Judgment on July 21, 1992.

Specifically, the persons who provided information were: four current employees on the Site who were determined through investigation to have been employed on the Site at different times during 1971 - 1973 and the two Site managers - one who was an employee of Helena Chemical Company and served as Plant Manager prior to September 1971, and subsequent to November 1972 and the other plant manager who was employed on the Site by Ansul Chemical Company during the period September 1971 - November 1972. Additional information concerning the Site was obtained from documents which were discovered as a result of investigation by Cedar's counsel in connection with the suit, some of which are attached to this memorandum. Based on these sources, we have found evidence supporting the following facts:

1. The Ansul Company owned two-thirds of the stock of Eagle River Chemical Corporation from the time Eagle River was formed in or about September 1971, until November 1973. Throughout the said fourteen month period the Site was actively managed and controlled by Ansul.



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2. Ansul caused the propanil manufacturing facility on the plant Site to be converted to a dinitrobutylphenol (dinoseb) manufacturing facility and throughout the calendar year 1972, until at least July 1972, dinoseb was manufactured on the Site. Dinoseb was never manufactured on the Site before or after 1972.

3. Attached as Exhibit A to this memorandum is a copy of a Bill of Sale dated November 15, 1972, whereby Ansul acquired what was purported to be the entire chemical inventory owned by Eagle River Chemical Corporation located on the Site at that time. All of the finished products listed in the second attachment to the Bill of Sale (Basanite and Ancrack) have been identified as dinoseb products which were produced and packaged at the Site in 1972. Most of the other products listed in the first attachment to the bill of sale have been identified as raw materials used to produce dinoseb and propanil. All of the said finished products are believed to have been produced during the period that the Site was controlled by Ansul and all of the raw materials are believed to have been acquired during the period when Ansul controlled the Site.

4. During the period beginning approximately November 1972, and ending approximately June 1973, personnel at the Site (believed to be employed by Eagle River Chemical Corporation or Helena Chemical Company) repackaged, reformulated and shipped the dinoseb products acquired by Ansul in accordance with Ansul's directions. Except for the drum burial activities described in Paragraph 5 below, there is no evidence that any other on-Site disposal of chemicals or other wastes occurred during the eight month period ending in June 1973. There is evidence in the form of the documents attached hereto as Exhibit B that at least some of Ansul's products which were stored on Site in June 1973, were removed from the Site and transported at Ansul's expense for off-site disposal.

5. The three drum burial pits described in the final drum removal reports submitted to ADPC&E by Cedar's contractor, in accordance with the provisions of the CAO, appear to have been constructed in December 1972 by the same personnel at the plant who were engaged in formulating, repackaging and shipment activities on behalf of Ansul as described above. The contents of the drums appeared to be identical to products identified in the inventory attached hereto as Exhibit A. The contents of these pits have been

removed and disposed of off-Site as reflected in the final drum removal reports.

6. In addition to the three drum burial pits which Cedar located, excavated and removed from the Site in accordance with the drum removal plans referred to in the CAO, there is evidence that containers and other unknown trash and wastes may have been buried in trenches during Ansul's management of the Site. There is also evidence that wastes from the dinoseb production unit may have been intentionally discharged to shallow ponds or an impoundment area on the Site. Approximate locations of the trenches and the impoundment referred to have been identified to be as shown in Attachment C to this memorandum. If these waste disposal areas in fact existed as of the latter part of 1972, as some of the deposition testimony has indicated, it is likely that they still exist today and therefore should be addressed in the FIWP. It has also been reported to Cedar's counsel by ADPC&E personnel that a file exists in ADPC&E archives containing reports of inspections by ADPC&E inspectors which occurred in 1972. It is possible that such reports could help resolve the conflicting information obtain concerning on-Site waste disposal practices in 1972 described above. On August 21, 1992, in the course of a visit to ADPC&E offices in Little Rock we requested access to the file referred to above, but the file could not be located at that time. We have requested that ADPC&E make an effort to locate the file and furnish us copies of the reports.

ATM:dds

EXHIBIT A

BILL OF SALE

Eagle River Chemical Corporation, for \$10.00 and other good and valuable consideration, receipt of which is hereby acknowledged, hereby sells and transfers to The Ansul Company the inventory set out on the attached Exhibit A.

EAGLE RIVER CHEMICAL CORPORATION

By

J. M. Dennis

Date

11/15/72

Eagle River Chemical Corp.

Highway 7 242

WEST HELENA, ARKANSAS 72390

Physical Inventory as of
November 4, 1972, Verified
November 14, 1972

<u>Description</u>	<u>Container Size</u>	<u>No. of Containers</u>
Mesityl Oxide	55 Gallon	44
Mesityl Oxide	30 Gallon	169
Propanil Emulsifier	55 Gallon	78
Propanil Emulsifier	30 Gallon	20
Tri Isopropanolamine	30 Gallon	113
Versene 100	55 Gallon	48
Tri-ethylyamine - TEA	55 Gallon	62
Tri-ethylyamine - TEA	30 Gallon	9
NP-100	55 Gallon	28
Methanol	30 Gallon	9
DCA	55 Gallon	6
DCA	30 Gallon	10
Sodium Nitrate	100// Bag	61
Empty Prop Job	30 Gallon Drums	1,530
Empty Basanite 3#	5 Gallon Pails	1,600
Empty Basanite 5#	5 Gallon Pails	60
Sponto 2180	55 Gallon	6
Xylene	30 Gallon	6
Xylene	5 Gallon	2
Mobiltherm 600	55 Gallon	37
Mobiltherm 600 & H ₂ O	55 Gallon	12
Mobiltherm 600 & H ₂ O	30 Gallon	4
Flake Caustic	400// Drum	2
Toluol	55 Gallon	2
Pella Oil	55 Gallon	2
Recovered Propionic Acid	55 Gallon	46
8% 3# Dinitro	30 Gallon	180
Unknown Mat'l (To be Identified)	55 Gallon	28
Unknown Mat'l (To be Identified)	30 Gallon	43

I agree to the above stated physical inventory of The Eagle River Chemical Corporation as of November 14, 1972.

Signed _____

Eagle River Chemical Corp.

Highway 242

WEST HELENA, ARKANSAS 72390

EAGLE RIVER CHEMICAL CORPORATION PHYSICAL INVENTORY AS OF NOVEMBER 4, 1972, VERIFIED NOVEMBER 14, 1972

<u>Description</u>	<u>No. of Containers</u>	<u>Total Gallons</u>
Basanite 3# 5 Gallon	10,294	51,470
Basanite 3# 30 Gallon	2,593	77,790
Basanite 3# 55 Gallon	44	2,420
Basanite 5# 5 Gallon	230	1,150
Basanite 5# 30 Gallon	202	6,060
Basanite 5# 55 Gallon	12	660
Basanite 5# Bulk		6,077
Ancrack 5 Gallon	11	55
Ancrack 30 Gallon	3	90
Basanite 3# 5 Gallon	145	725

I agree to the above stated physical inventory of the Eagle River Chemical Corporation as of November 14, 1972.

Signed _____

EXHIBIT B



THE ANSUL COMPANY, MARINETTE, WISCONSIN 54143

(715) 735-7411 TELEX 26-3446 TWX 910-270-1383

ORIGINAL
PURCHASE ORDERSUBJECT TO THE ANSUL COMPANY
STANDARD PURCHASE ORDER TERMS

ORDER DATE	REQ. NO.	PURCHASE ORDER NO.	DIRECT CORRESPONDENCE, CALLS, ETC.	SPECIAL INSTRUCTIONS
6-7-73	58252	AOO79142	D. R. Rife pjg	Pick up at Eagle River Chemical Co. West Helena, Ark.

VENDOR

Conservation Chemical Co.
Box 6066
Gary, Indiana 46406

Attn: Mr. Norm Hjersted

L.C.D.

PLEASE SEND INVOICE
ATTN: ACCOUNTS
PAYABLE DEPT.

SHIP TO ANSUL RECEIVING STATION SHOWN BELOW UNLESS OTHER DESTINATION SPECIFIED

DUE DATE
AT ANSUL

TERMS	F.O.B.	SHIP VIA	FREIGHT	TAX STATUS	MO.	DA
net 30	dest	Your Truck	ppd			
QTY. ORDERED	ANSUL PART NO.	DESCRIPTION	ACCOUNT	PRICE		
		Confirmation of verbal order to Norm Hjersted				
		Order to cover pick up and disposal of the following materials:				
30 bbls		Mesityl Oxide	3476	Advise		ASA
30 bbls		Triethanolamine				
30 bbls		Emulsifier				
		Material will be in 55 & 30 gallon drums. Pick up at Eagle River Chemical Co., Hwy 242, West Helena, Arkansas				

IMPORTANT
VENDOR
INSTRUCTIONS

PUR-100

1. ACKNOWLEDGE THIS ORDER PROMPTLY.
2. SHOW OUR PURCHASE ORDER NUMBERS ON ALL INVOICES, BILLS OF LADING, PACKAGES, PACKING LISTS, & CORRESPONDENCE.
3. WHEN PARTS ARE IDENTIFIED WITH ANSUL PART NUMBERS, PLEASE CHECK YOUR LATEST BLUEPRINT REVISION NUMBER AND ADVISE IMMEDIATELY IF YOUR BLUEPRINTS ARE NOT CORRECT.
4. MAIL BILL OF LADING TO US ON DAY OF SHIPMENT.
5. WISCONSIN SELECTIVE SALES AND USE TAX PERMIT 41708. IS THIS ORDER SUBJECT TO TAX?

BY

PURCHASING AGENT



THE ANSUL COMPANY, MARINETTE, WISCONSIN 54143

(715) 735-7411 TELEX 26-3448 TWX 910-270-1383

ORIGINAL
PURCHASE ORDERSUBJECT TO THE ANSUL COMPANY
STANDARD PURCHASE ORDER TERMS

ORDER DATE	REQ. NO.	PURCHASE ORDER NO.	DIRECT CORRESPONDENCE, CALLS, ETC.	SPECIAL INSTRUCTIONS
6-7-73	58252	AOO79142	D. R. Rife p/jg	

VENDOR

Conservation Chemical Co.

Page 2

L.C.D.

PLEASE SEND INVOICE
ATTN: ACCOUNTS
PAYABLE DEPT.

SHIP TO ANSUL RECEIVING STATION SHOWN BELOW UNLESS OTHER DESTINATION SPECIFIED

DUE DATE
AT ANSUL

TERMS	F.O.B.	SHIP VIA	FREIGHT	TAX STATUS		
QTY. ORDERED	ANSUL PART NO.	DESCRIPTION	ACCOUNT	PRICE	MO.	DAY
		Please notify Mr. John Halcomb 501-572-3701 when your truck leaves Gary, Indiana. Purchase order to cover material transportation disposal and decontamination & disposal of empty containers. Seller certifies that goods, supplies, equipment fur- nished hereunder are in compliance with Williams Steiger Act (Occupational Safety and Health Act of 1970) and amendments thereto and all standards promulgated thereunder.				

IMPORTANT.
VENDOR
INSTRUCTIONS

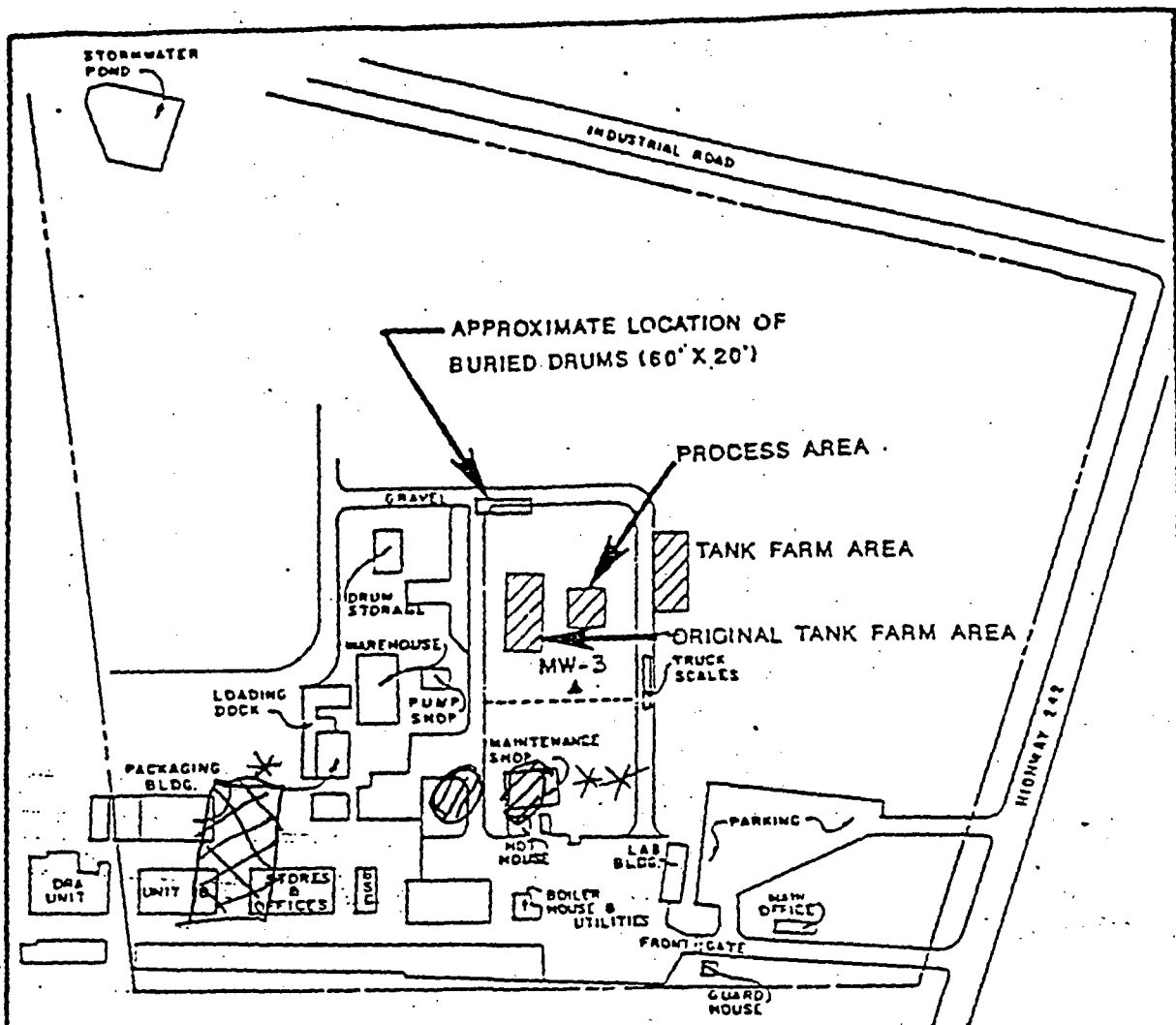
1. ACKNOWLEDGE THIS ORDER PROMPTLY.
2. SHOW OUR PURCHASE ORDER NUMBERS ON ALL IN-VOICES, BILLS OF LADING, PACKAGES, PACKING LISTS, & CORRESPONDENCE.
3. WHEN PARTS ARE IDENTIFIED WITH ANSUL PART NUMBERS, PLEASE CHECK YOUR LATEST BLUEPRINT REVISION NUMBER AND ADVISE IMMEDIATELY IF YOUR BLUEPRINTS ARE NOT CORRECT.
4. MAIL BILL OF LADING TO US ON DAY OF SHIPMENT.
5. WISCONSIN SELECTIVE SALES AND USE TAX PERMIT 41708, IS THIS ORDER SUBJECT TO TAX?

BY

PURCHASING AGENT

PUR-100

EXHIBIT C



* Possible location of slit trenches
 [hatched box] where trash buried - 1972

** Possible location of surface impoundments
 (o) (o) used to store or dispose of dioxin production wastes - 1972

SITE MAP

CEDAR CHEMICAL COMPANY
 WEST HELENA, ARKANSAS

SOURCE:
 GRUBBS, GARNER & HOSKYN, INC.
 CONSULTING ENGINEERS

SCALE: 1" = 200'

FILE: 902550C
 JUNE 1990

FIGURE 2